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Bell Atlantic

December 2, 1999

BY HAND

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Application of Bell Atlantic Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in New York,
CC Docket No. 99-295

Dear Ms. Salas:

Please find enclosed for filing an original and four copies of Bell Atlantic's Opposition to AT&T's Motion to Strike or to Disregard Portions of the Reply Submissions of Bell Atlantic and Bell Atlantic's Motion to Strike or to Disregard Portions of AT&T's Opening and Reply Submissions. Also enclosed is a diskette containing an electronic copy of this document.

Pursuant to the Public Notice issued on September 28, 1999, counsel for AT&T Corp., the New York Public Service Commission, and the Department of Justice were served either by hand or by both first-class mail and facsimile.

Thank you for your assistance. If you have any questions, please call me at 202-326-7945.

Very truly yours,

Michael E. Glover

Enc.

No. of Copies rec'd 0+4
List ABCDE

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by New York Telephone	)	
Company (d/b/a Bell Atlantic -	)	
New York), Bell Atlantic	)	CC Docket No. 99-295
Communications, Inc., NYNEX Long	)	
Distance Company, and Bell Atlantic	)	
Global Networks, Inc., for	)	
Authorization To Provide In-Region,	)	
InterLATA Services in New York	)	

BELL ATLANTIC'S OPPOSITION TO AT&T'S MOTION TO STRIKE OR TO DISREGARD PORTIONS OF THE REPLY SUBMISSIONS OF BELL ATLANTIC
AND
BELL ATLANTIC'S MOTION TO STRIKE OR TO DISREGARD PORTIONS OF AT&T'S OPENING AND REPLY SUBMISSIONS

AT&T (and only AT&T) has filed a motion to strike certain portions of Bell Atlantic's reply submissions. AT&T claims that Bell Atlantic's reply submissions contain new evidence and argument, in violation of this Commission's rules. But each of AT&T's arguments is entirely meritless. Bell Atlantic's reply submissions include only evidence and argument that are responsive to the comments of other parties or a matter of public record, and are expressly permitted under the Commission's established procedures. Given the baseless nature of its claims, AT&T's motion on its face is nothing more than a desperate attempt to disrupt the efficient conduct of this proceeding, with even the timing of its motion carefully calibrated to achieve the maximum disruptive effect.[1] AT&T's motion must be denied.

[1] The Commission may properly take notice of the fact that AT&T's motion was filed on the eve of the Thanksgiving holiday, thereby limiting the number of business days available

Lest anyone overlook its no-holds-barred approach to the 271 process, AT&T targets the reply submissions of not only Bell Atlantic but also the New York PSC. It apparently takes this remarkable step because it seeks to suppress at all cost one particular item contained in the PSC's reply submission: the discussion of the "August hot-cut reconciliation," in which AT&T's tenuous claims with respect to hundreds of individual hot cuts were flatly rejected. While the PSC presumably will defend its submissions itself, suffice it to say for present purposes that AT&T's attack on the PSC is a non-starter for legal reasons: it entirely overlooks "the explicit role the Act gives to . . . the state commissions under section 271." September 28 Public Notice at 8. Section 271(d)(2)(B) expressly directs the FCC to consult with the state commission, which is to verify compliance with the checklist. Any limitation on the state commission's ability to fulfill its assigned role would plainly run counter to the statute.[2]

Quite apart from the fact that AT&T's arguments fail, AT&T is hardly in any position to cast itself as the selfless champion of the integrity of this Commission's processes. If anyone has violated the new-evidence rule, it is AT&T: its reply submissions are larded with new evidence that is responsive to no one. Moreover, AT&T has throughout this process

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for a response. Cf. FCC, Public Notice, Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act, DA-99-1994, at 6 (rel. Sept. 28, 1999) ("September 28 Public Notice") ("The Commission strongly discourages, and will take appropriate steps to prevent, an applicant from attempting to limit the time for interested third parties to review an application (e.g., by filing on a Friday or the day before a national holiday).").

[2] Indeed, for precisely this reason, this Commission has made clear that the ex parte restrictions do not apply to the state commission, and that new factual information provided by the state commission during the ex parte period may be placed on the record as late as the Commission's order. See September 28 Public Notice at 8-9.

brazenly ignored this Commission's rule against "substantive legal and policy arguments" in affidavits, which is intended to ensure that commenters do not skirt page limitations. Accordingly, the Commission should now strike the submissions in which AT&T itself has violated the rules against new evidence and against legal argument in affidavits.

I. BELL ATLANTIC'S REPLY SUBMISSIONS DO NOT INCLUDE IMPROPER NEW EVIDENCE OR ARGUMENT.

The so-called "complete when filed rule" is not intended to tie an applicant's hands behind its back, nor to give commenters a license to spread falsehoods unopposed. Rather, the rule is intended to ensure only that an applicant make a prima facie case in its application, and that it address matters that it "can reasonably anticipate will be at issue." Michigan Order ¶ 57. In this latter respect, it is an "anti-sand-bagging" rule -- no more and no less.

Consequently, the Commission has made clear that an applicant is not automatically barred from relying on post-application evidence on reply. See September 28 Public Notice at 3 (applicant "may submit new factual evidence" to "rebut arguments made, or facts submitted"); see also id. at 7. There are but two restrictions on such evidence: (1) it may not post-date the filing date of the comments to which it responds, and (2) it may not post-date the period placed in dispute by those comments. See id. at 3 (new evidence may not "post-date the filing of the relevant comments"); id. at 7 (new evidence may "cove[r] only the period placed in dispute by commenters"); see also Michigan Order ¶¶ 51, 154.[3]

[3] Nothing here should be read to concede the lawfulness of the rules set forth in the text. Bell Atlantic submits that, at least as applied in certain circumstances, these rules would be clearly unlawful. See, e.g., Bell Atlantic Rep. Cmts. at 29 & n.35. More generally, the

Similarly, an applicant is not automatically barred from making new arguments in its reply. Again, the application need address only matters that the applicant "can reasonably anticipate will be at issue," Michigan Order ¶ 57, and "new arguments" are expressly permitted on reply if they are "responsive to arguments other participants have raised," September 28 Public Notice at 7. Moreover, an applicant need not in its application "anticipate and address every argument and allegation its opponents might make in their comments." Michigan Order ¶ 57. For example, the Commission has recognized that, although in state 271 proceedings "certain factual disputes will come to light, and certain concerns will likely be expressed by the state commission," id., an application need not address every conceivable issue that has at one time or another been raised and addressed in the course of the state commission's review, id.

AT&T makes four categories of arguments as to why Bell Atlantic has violated the restrictions on new evidence and argument. All four are meritless.[4]

First, AT&T complains of evidence relating to Bell Atlantic's provisioning of hot cuts. See Motion at 3-6. Its main focus here is on the PSC's discussion of the August reconciliation, which, because it is so harmful to it, AT&T is trying to sweep under the rug. See id. at 4.

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rules ignore the inherently dynamic character of 271 proceedings before state commissions (which can hardly be expected to grind to a halt the day a Bell company files an FCC application). But, assuming the validity of these rules, AT&T's motion must be denied, and Bell Atlantic's must be granted.

[4] Appendix A to this filing contains a point-by-point response to Exhibit 1 to AT&T's motion, which identifies the specific pages and paragraphs in Bell Atlantic's reply submissions that AT&T erroneously claims violate this Commission's rules. For the Commission's convenience, we have organized Appendix A to track the order of AT&T's exhibit.

But AT&T also complains that Bell Atlantic itself has "submitted new evidence and arguments" relating to "Bell Atlantic's responsibility for putting customers out-of-service for extended periods of time following a hot cut." Id. at 3-4.[5] AT&T argues that, in PSC proceedings, it submitted evidence and argument "regarding each of the outages that its customers suffered as a result of a hot cut beginning on March 23, 1999, and including the period between June 21 and July 31, 1999." Id. at 4. AT&T says that Bell Atlantic was therefore required to rebut that evidence and those arguments in its Application. See id. at 5.

The fact of the matter is that Bell Atlantic's Application extensively addressed concerns regarding service outages and out-of-service conditions during hot cuts. The Application demonstrated that, between June 21 and September 17, 1999 (which includes the specific period about which AT&T complains), Bell Atlantic provided more than 94 percent of its 4,497 hot-cut orders on time. See Lacouture/Troy Decl. ¶¶ 72-73. The Application further showed that, during that same period, CLECs submitted very few "I Codes" (trouble reports within seven days from installation of a hot cut), see Dowell/Canny Decl. ¶ 74 & Att. D, which, together with BA-NY's on-time performance, conclusively proves that Bell Atlantic's hot-cut processes were not causing the massive service outages that AT&T claims.[6]

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[5] The specific Bell Atlantic reply submissions AT&T seeks to strike are "Bell Atlantic Reply Comments at 9" and "Lacouture/Troy [Rep. Decl.] ¶¶ 53-57." Motion Exh. 1, at 1. Both items consist of a rebuttal to AT&T's argument (see AT&T Comments at 32-33) that Bell Atlantic's hot-cut process is responsible for service outages.

[6] If a hot cut were properly completed on time but for some reason the customer lost service, it would trigger an "I Code" when the customer reported that it was out of service. Thus, a combination of high on-time performance and low "I Codes" flatly refutes AT&T's claims of hot-cut-related outages.

Moreover, the Application described the "data reconciliation" undertaken by the PSC staff (i.e., a process in which the staff tried to resolve whether Bell Atlantic's or AT&T's data were correct) with respect to the June and July data. See Lacouture/Troy Decl. ¶ 75. The Application noted that, in the course of that reconciliation, AT&T had claimed that (due in part to service outages) Bell Atlantic's hot-cut performance was really only in the 70 percent range. See id. The Application demonstrated that the PSC had rejected AT&T's claims, and that the results of the staff's reconciliation resulted in a reduction of Bell Atlantic's 94 percent score by a mere 1.5 percent. See id.

No more than this was required. For one thing, the Application here explained that AT&T's arguments had been rejected by the PSC. That should be the end of the matter: the arguments were no longer "outstanding." Michigan Order ¶ 57. For another thing, a 271 applicant cannot possibly be expected to rebut in intricate detail every last argument and data set that has been submitted to a state commission, especially where those claims previously were rebutted and rejected by the state commission.

AT&T further suggests that, "because Bell Atlantic chose to file its application before any reconciliation of the August performance data could be completed, it cannot now rely on the evidence of that reconciliation to support its application." Motion at 5 (emphasis added). The claim is puzzling, because Bell Atlantic's reply submissions nowhere included any reference to the August reconciliation: on November 8, Bell Atlantic (unlike the PSC) was not yet privy to the results of the August reconciliation. Thus, there is simply nothing to strike in Bell Atlantic's submissions on this ground. In any event, AT&T's arguments regarding

August hot-cut data were virtually identical to its arguments regarding the July data -- which Bell Atlantic did address, and which the PSC rejected. See supra.

Second, AT&T claims that Bell Atlantic introduced on reply "for the first time in any forum" data on Bell Atlantic's flow-through rates for retail orders. Motion at 6 (emphasis in original). Again, this is simply not true.

Because there is no close retail analog in Bell Atlantic's systems to the flow through of CLEC orders, flow through must in Bell Atlantic's case be measured by absolute standards.[7] Nevertheless, Bell Atlantic's Application provided data on the next closest retail surrogate: Bell Atlantic measured the percentage of order types that, in Bell Atlantic's retail systems, can be entered through a simplified interface (called the Direct Order Entry or "DOE" system).[8] Bell Atlantic then compared that percentage to the percentage of CLEC order types that are

[7] In its Carrier-to-Carrier rulemaking, the PSC set itself the goal of establishing "parity standards for functions that have retail analogies and absolute standards for functions that do not have retail analogies." Case 97-C-0139, PSC, Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies, Order Adopting Inter-Carrier Service Quality Guidelines at 2, Feb. 16, 1999. The PSC adopted absolute standards for "percent flow through achieved," id., Order Establishing Permanent Rule, App. at 24, June 30, 1999, thereby indicating that it found that no retail analog exists.

[8] In Bell Atlantic's systems, certain simple retail orders can be input through the DOE system; information "flows through" from the DOE system directly into the Service Order Processor ("SOP"), which is the underlying OSS. See Miller/Jordan Decl. ¶ 57; Miller/Jordan/Zanfini Rep. Decl. ¶ 37. More complex retail orders, however, cannot be entered via the DOE system; instead, they must be entered directly into the SOP. Retail representatives take these more complex orders down on paper; they do not input them into the SOP until after the telephone call with the customer. Complex orders therefore present the same opportunity for error as CLEC orders that fail to "flow through": in both cases, customer information must be recorded twice instead of just once. Accordingly, the percentage of retail orders that can be and is entered through the DOE system is somewhat analogous to the percentage of CLEC orders that can and do flow through.

designed to flow through. See Miller/Jordan Decl. ¶¶ 56-58; Dowell/Canny Decl. Att. F; Miller/Jordan/Zanfini Rep. Decl. ¶¶ 37-38. This analysis showed that there was "a high correlation between 'flow through' of retail orders and CLEC order types that are designed to flow through." Miller/Jordan Decl. ¶ 58.

AT&T criticized this comparison, mistakenly arguing that it is not meaningful unless accompanied by data concerning the actual numbers of orders (rather than order types) that "flow through." That criticism was clearly mistaken. The fact that most kinds of CLEC orders are capable of flowing through if they also would "flow through" on the retail side shows that both have comparable capabilities available to them. See Bell Atlantic Rep. Cmts. at 18 n.20. In contrast, examining the relative numbers of orders that "flow though" would be misleading: for example, the results would be affected by differences in order mix.

Nevertheless, in response to AT&T's argument, Bell Atlantic submitted data demonstrating that, even using AT&T's flawed comparison, the actual number of orders that "flow through" on the retail side also is comparable to CLEC flow through. See Miller/Jordan/Zanfini Rep. Decl. ¶ 39; id. at Att. E. Because that additional data was directly responsive to AT&T's (erroneous) claims, it was clearly permissible under the Commission's standards.

Third, AT&T claims that, "with regard to OSS, section 272, performance metrics and the Performance Assurance Plan (PAP), Bell Atlantic introduced new argument as well as factual evidence that post-dates the filing of comments in this proceeding." Motion at 6; see also id. at Exh. 1.

As explained more fully in Appendix A to this filing, AT&T's claims are again misplaced. Much of the evidence and argument of which AT&T complains directly responds to the Department of Justice, and concerns a period that pre-dates the Department's Evaluation and that the Department placed in dispute. Many of the other items about which AT&T complains consist of new PSC orders and Bell Atlantic's discussion of them. But those orders clearly do not constitute "new evidence": they are matter of public record of which this Commission may properly take official notice.[9] Nor is Bell Atlantic's discussion of new orders "new argument": Bell Atlantic's reply submissions pointed to them merely as confirming arguments already made in the Application. See Application at 68-71; cf. Brown v. Secretary of Army, 86 F.3d 225, 226 (D.C. Cir.) ("reliance upon [judicial decision not cited in previously filed papers] does not present a new (and therefore untimely) argument"), cert. denied, 519 U.S. 1040 (1996).

Fourth, AT&T claims that Bell Atlantic's reply submissions contain "new promises of future performance" on which Bell Atlantic should not be permitted to rely "for the first time on reply." Motion at 6-7. As again more fully explained in the attached Appendix A, there is

[9] See, e.g., Impsat USA, Inc., 12 FCC Rcd 7682, ¶ 8 (1997) (taking official notice of AT&T's status as holder of particular Section 214 licenses); Radio Lake Geneva Corp., 7 FCC Rcd 5586, ¶ 17 (1992) (taking official notice of decision of Federal Aviation Administration); J. Sherwood, Inc., 63 FCC2d 151, ¶ 1 n.2 (1976) (taking official notice of FCC administrative law judge's decision in related matter); cf. 47 C.F.R. §§ 1.203, 1.361; Fed. R. Evid. 201. Indeed, in the Michigan Order, the Commission declined to consider certain post-application PSC orders not because they post-dated the application but, rather, because they had been withdrawn or were not final. See Michigan Order ¶¶ 155-156. If the new-evidence rule categorically barred reliance on new PSC orders, the Commission would presumably have said so.

nothing to this. Many of the commitments about which AT&T complains are not new -- they merely reiterate Bell Atlantic's age-old commitments continuously to improve its systems based on input from the New York PSC and CLECs in ongoing proceedings and collaboratives. Other commitments about which AT&T complains were made before October 19 (in an affidavit filed with the PSC on October 8), and respond to issues placed in dispute by commenters. In any event, the Application demonstrated conclusively that Bell Atlantic satisfied the checklist. Many of the points AT&T targets are merely illustrative of Bell Atlantic's commitment to continue to improve its wholesale systems and processes even further.

In sum, each of AT&T's claims of new evidence and argument is meritless. AT&T's motion to strike must therefore be denied.[10]

II. PORTIONS OF AT&T'S OWN REPLY SUBMISSIONS CONTAIN AND RELY UPON IMPROPER NEW EVIDENCE AND MUST THEREFORE BE STRICKEN.

Quite apart from the fact that AT&T's claims are misguided, AT&T is in no position to complain. As AT&T recognizes in connection with its wrong-headed attack on the PSC's reply submissions, the new-evidence rule that applies to the reply submissions of a 271

[10] Accordingly, AT&T's clearly improper attempt to tender a new affidavit (the Supplemental Affidavit of Jack Meek) must also be rejected. In a footnote that does not pass even the laugh test, AT&T says that the affidavit "is submitted here only for the purpose of underscoring the practical importance of enforcing the Commission's rules." Motion at 9 n.9. But, knowing that it has stepped over the line, AT&T asks the Commission not to count the affidavit "against the 20-page limit on ex-parte submissions." Id. Given AT&T's outrageous conduct here, the Commission should reject the affidavit. If, however, the Commission were

applicant "'applies with equal force to other participants in the proceeding,'" Motion at 3 (quoting South Carolina Order ¶ 41), which clearly includes AT&T itself. Yet, unlike Bell Atlantic's reply (which adheres to the Commission's standards), portions of AT&T's reply submissions openly trample upon this rule. Accordingly, those portions should be stricken.

In particular, the Reply Affidavit of Raymond Crafton and Timothy Connolly is replete with prohibited new evidence. For example, this affidavit contains an entire Section IV that is entitled "AT&T's Actual Commercial Experience in Providing Residential Service Using the UNE Platform During October." Crafton/Connolly Rep. Aff. at 44 (emphasis added). In it, the affiants purport to describe AT&T's experience in providing service to residential customers using the UNE platform, including orders submitted through October 24. See id. ¶¶ 76, 79; id. at Att. 3-16.[11]

Moreover, the affidavit addresses the supposed handling of these orders well beyond October 24 -- indeed, all the way up to the date of filing reply comments. As the affiants explain: "Attempting to include orders submitted during October with later due dates (for example, orders placed on October 29 with a due date of November 5) would have raised the possibility that the data would not have accounted for all status notices received at the time this reply affidavit was filed." Id. ¶ 79 n.39 (emphasis added); see also id. ¶ 79 n.41. This

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to accept the affidavit, it should also consider the Supplemental Lacouture/Troy Declaration that is attached to this filing as Appendix B.

[11] Some of the cited attachments to the Crafton/Connolly Reply Affidavit were filed confidentially pursuant to protective order. The fact that the attachments reflect October data, however, is not confidential: it is reflected in the publicly filed version of AT&T's reply submissions. See Crafton/Connolly Rep. Aff. ¶¶ 64 n.31, 80, 81, 82, 84, 86.

statement makes clear that the affiants rely on evidence that reaches until the very "time this reply affidavit was filed" -- November 8.[12]

In addition to the purported October data referenced in Section IV, the affidavit is replete with references to specific incidents that occurred after October 19. See, e.g., id. ¶¶ 89, 90-92, 93, 94 (new claims regarding certain notices); id. ¶¶ 98, 101 n.50 (new billing claims up to reply date). Similarly, the affiants rely heavily on two Change Management meetings, one of which took place on October 25. See id. ¶¶ 60-64. In fact, the affiants go on to provide a table purporting to "summariz[e] the status of BA-NY's proposed . . . changes after the October 18 and 25 meetings," id. ¶ 64 n.31, apparently up to the very filing date of AT&T's reply, see id. at Att. 2.

AT&T may claim that the new material in its reply is a response to the PSC's October 19 Evaluation.[13] But, even on the favorable (and unfounded) assumption that all of AT&T's new evidence was responsive to the PSC's Evaluation, AT&T still was not permitted to submit evidence reflecting events after October 19. Accordingly, all portions of AT&T's reply submissions containing or relying upon post-October 19 evidence must be stricken.[14]

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[12] The statement is notable for another reason: the complete absence of any concern for the October 19 cut-off that AT&T's motion now so self-righteously proclaims to be sacrosanct.

[13] AT&T's new evidence cannot possibly be defended as being "responsive" to evidence contained or referenced in the Department of Justice's November 1 Evaluation: on the points at issue, AT&T never expressed any disagreement with the DoJ's Evaluation and evidence, and much of AT&T's evidence post-dates November 1 in any event.

[14] The specific portions of AT&T's reply submissions that should be stricken on new-evidence grounds are: Crafton/Connolly Rep. Aff. ¶¶ 60-64, 76-103, and Attachments 2-16. To the extent they rely on new evidence in the Crafton/Connolly Reply Affidavit, the following

III. PORTIONS OF AT&T'S ORIGINAL AND REPLY AFFIDAVITS VIOLATE THE RULE AGAINST LEGAL AND POLICY ARGUMENT.

AT&T's disregard for the Commission's procedural rules does not end with the submission of new evidence: in addition, AT&T's affidavits are rife with prohibited legal and policy argument. To the extent AT&T's purportedly factual submissions contain such argument, they must be stricken as well.

In its September 28 Public Notice, this Commission stated:

> We . . . require applicants and commenting parties to make all substantive legal and policy arguments in a legal brief (i.e., Applicant's Brief in Support, comments in opposition or support, reply comments, ex parte filings). The Commission retains the authority to strike, or to decline to consider, substantive arguments that appear only in affidavits or other supporting documentation.

Id. at 4 (emphasis added); see also id. at 6 & n.11; id. at 7. The rationale for this rule is crystal clear. Comments are subject to a 100-page limitation, and third-party reply comments are subject to a 50-page limitation. See id. at 6, 7. If commenters were free to include substantive arguments in their affidavits, the page limitations would be a nullity. See id. at 6 & n.11. This not only would leave undisciplined commenters free to burden the Commission with endless argument, but also would be unfair to those who left legal argument on the cutting-room floor in an attempt to stay within the page limitations.

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items should be stricken as well: Pfau/Kalb Rep. Aff. ¶¶ 51-53, 55-56; and Reply Comments at 28 (line 15) through 29 (line 14) and at 32 (lines 3-9).

Arguably, almost all of AT&T's affidavits violate the rule: almost all contain extensive legal argument.[15] Bell Atlantic recognizes, however, that the line between legal argument and factual assertion is sometimes blurry. That said, three of AT&T's affidavits -- the Affidavit of Robert E. Kargoll, the Affidavit of C. Michael Pfau and Michael Kalb, and the Reply Affidavit of C. Michael Pfau and Michael Kalb -- are so far beyond the pale as to violate the rule by any conceivable measure: these submissions consist almost exclusively of legal and policy argument.

The Kargoll Affidavit addresses issues relating to Section 272, while the Pfau/Kalb Affidavits address performance monitoring issues (including performance reporting requirements, performance reporting results, and performance enforcement mechanisms). Each contains lengthy argument as to what is required under prior 271 rulings. (Indeed, the Kargoll Affidavit does not limit itself to arguing what is required under prior 271 rulings: it goes so far as to argue that certain of those rulings were wrongly decided and should be reconsidered. See Kargoll Aff. ¶¶ 67, 72-82, 84-87.) The affidavits then go on to explain why, in the affiants' view, Bell Atlantic's submissions fail to establish that Bell Atlantic meets the posited requirements. In each affidavit, one is hard pressed to find even a single factual assertion (be it of historical fact or expert opinion) -- except for biographical information.[16]

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[15] See, e.g., Clarke/Petzinger Aff. ¶¶ 3, 8-14, 22, 27-30, 31-37, 42, 44, 49, 54; Crafton/Connolly Aff. ¶¶ 15-17, 20, 32, 34, 48, 52, 63, 67, 75, 117, 187, 193, 279; Crafton/Connolly Rep. Aff. ¶¶ 6-8, 50-52, 103-106.

[16] AT&T itself cites these affidavits as though they were legal treatises. Ironically, where AT&T's Motion to Strike seeks to support its mistaken legal argument that a 271

The resulting violation is all the greater because both AT&T's opening comments and its reply comments used up their entire page limits. AT&T must have concluded that, because there was no room in its comments for all its erroneous legal arguments, it would simply include them in affidavits instead. The Kargoll and Pfau/Kalb Affidavits, therefore, are transparent attempts to evade the Commission's page limitations. Nor is AT&T's violation de minimis. The affidavits in question cover almost 230 pages. Had AT&T submitted these affidavits in lieu of comments, they would have violated the page limitations all by themselves. In sum, AT&T's violations are both harmful and egregious. They should not be tolerated. The Kargoll and Pfau/Kalb Affidavits should therefore be stricken, along with the portions of AT&T's comments and reply comments relying on them.[17]

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application must always contain evidence relating to a BOC's flow-through rates, AT&T's legal authority is this: "see Pfau/Kalb Aff. ¶¶ 34-39 (citing decisions)." Motion at 6.

[17] Bell Atlantic submits that, because these affidavits consist almost entirely of improper argument, it is only appropriate that, rather than scouring the affidavits for rare factual snippets that might be salvageable, the Commission simply strike them in toto (along with all portions of AT&T's comments and reply comments relying on them).

CONCLUSION

For the reasons set forth above, the Commission should deny AT&T's motion to strike. Instead, it should grant Bell Atlantic's motion to strike.

Respectfully submitted,

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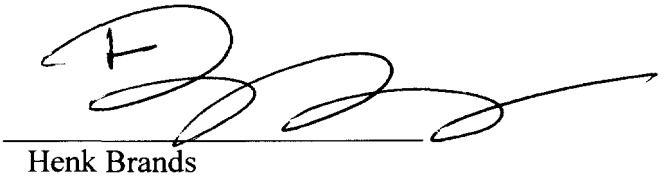
December 2, 1999

CERTIFICATE OF SERVICE

I hereby certify that, on this 2nd day of December 1999, I caused copies of the foregoing document (Bell Atlantic's Opposition to AT&T's Motion to Strike or to Disregard Portions of the Reply Submissions of Bell Atlantic and Bell Atlantic's Motion to Strike or to Disregard Portions of AT&T's Opening and Reply Submissions) to be served upon the parties on the attached service list either by hand (designated by an asterisk -- *) or by first-class mail, postage prepaid, and facsimile (designated by two asterisks -- **).



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Appendix A: Point-by-Point Response to AT&T's Exhibit 1

Unbundled Loops

- Reply Comments at 9; Lacouture/Troy Rep. Decl. ¶¶ 53-57 (service outages during hot cuts).

AT&T claims that Bell Atlantic's reply submissions contain new argument responding to AT&T's allegations that Bell Atlantic caused service outages and out-of-service conditions during hot cuts. AT&T says that its "arguments about Bell Atlantic's responsibility for outages and out-of-service conditions were key issues before the New York PSC," and that Bell Atlantic therefore "should have included these arguments in its initial affidavit and not merely on reply."

Bell Atlantic's Application specifically addressed concerns regarding service outages and out-of-service conditions during hot cuts. For one thing, the Application explained that Bell Atlantic worked co-operatively with the PSC and CLECs to develop a hot-cut process that minimizes service outages, and that KPMG verified that Bell Atlantic is following that process. See Lacouture/Troy Decl. ¶¶ 69-73. For another thing, Bell Atlantic demonstrated that, between June 21 and September 17, 1999 (which includes the specific period about which AT&T complains), Bell Atlantic provided hot cuts on a timely basis. See id. ¶¶ 72-73. For a third thing, Bell Atlantic showed that, during this period, CLECs submitted very few "I Codes" (trouble reports within seven days from a hot cut). See Dowell/Canny Decl. ¶ 74 & Att. D. Finally, Bell Atlantic described the "data reconciliation" undertaken by the PSC staff with respect to the June and July data. See Lacouture/Troy Decl. ¶ 75. No more was required. To the extent Bell Atlantic addressed the issue on reply, it did so in direct response to the arguments of AT&T and others.

- Reply Comments at 10-11; Lacouture/Troy Rep. Decl. ¶¶ 61, 64-68 (adherence to required hot-cut procedures)

AT&T claims that Bell Atlantic's reply submissions contain new argument responding to AT&T's allegations that Bell Atlantic has not followed required hot-cut procedures: AT&T contends that "AT&T's argument about Bell Atlantic's failure to follow the agreed provisioning process were key issues before the New York PSC," and that Bell Atlantic therefore "should have included these arguments in its initial affidavit and not merely on reply."

Bell Atlantic's Application specifically addressed the issue of Bell Atlantic's adherence to required hot-cut procedures. For one thing, Bell Atlantic demonstrated that Bell Atlantic is using the PSC's revised hot-cut tracking process, which includes the Due Date Minus 2 ("DD-2") and "go/no go" checks as well as a checklist for use on each hot cut to verify that required steps are followed. See Lacouture/Troy Decl. ¶¶ 70-71; Application at 18. For another thing, Bell Atlantic addressed the hot-cut process for customers served by IDLC facilities. See Lacouture/Troy Decl. Att. F. For a third thing, Bell Atlantic addressed KPMG's findings that Bell Atlantic has followed all required hot-cut procedures. See Lacouture/Troy Decl. ¶ 71 (citing KPMG Report at § IV.L.3.1, Table IV12.6, P12-3). Finally, Bell Atlantic addressed the

reconciliation of hot-cut data that the PSC had completed at the time Bell Atlantic filed, which involved four weeks of data beginning June 21. See Lacouture/Troy Decl. ¶ 75. No more was required. To the extent Bell Atlantic addressed the issue on reply, it did so in direct response to the arguments of AT&T and others.

- Reply Comments at 10 n.9; Lacouture/Troy Rep. Decl. ¶ 63 (inclusion of DD-2 check in the PR-4-06 metric)

AT&T claims that Bell Atlantic improperly relies on a new commitment to include the DD-2 check in the PR-4-06 metric. This is not a new commitment, but rather a description of a commitment contained in Bell Atlantic's Amended Performance Assurance Plan. Bell Atlantic filed the Amended Plan with the PSC on September 24, 1999, and submitted it along with the Application.

- Reply Comments at 9; Lacouture/Troy Rep. Decl. ¶ 157 & Att. G (dropped directory listings)

AT&T complains of a "reference to Bell Atlantic's promise to provide additional reporting with respect to dropped directory listings for hot cut customers and Bell Atlantic's promise to make directory listing systems changes in February 2000 to resolve dropped systems problems." AT&T's complaint appears to center on a letter Bell Atlantic sent to the PSC, see Lacouture/Troy Rep. Decl. Att. G, in response to the PSC's statement in its Evaluation that it would conduct "ongoing . . . oversight" of Bell Atlantic's efforts to eliminate directory listings issues on hot cuts, PSC Eval. at 121. In the letter, Bell Atlantic agreed to report a new performance measure (% Errors Discovered at DD+2 Days) and to continue to report an existing measure (% Errors Remaining at DD+7 Days).

Although Bell Atlantic's Application showed that it had done all that was required under the checklist, it also demonstrated that it had put in place procedures to avoid dropped directory listings. See Application at 30-31; Lacouture/Troy Decl. ¶¶ 208-210. Certain comments nevertheless claimed that Bell Atlantic dropped directory listings in September. See AT&T Comments at 42-44; DoJ Eval. at 19-20. Bell Atlantic's reply submissions demonstrate not only that these comments are in error, but also that its procedures are calculated to prevent any dropped listings and that, as an added safeguard, the PSC is exercising close continuing oversight in this area. See Lacouture/Troy Rep. Decl. ¶¶ 150-158. Bell Atlantic's reply points to the PSC letter not to demonstrate the existence of any new commitments, but merely to illustrate the pre-existing fact that the PSC is closely monitoring Bell Atlantic's performance.

Performance Measures and Amended Performance Assurance Plan

- Reply Comments at 57-60; Dowell/Canny Rep. Decl. ¶¶ 3, 24, 31, 62, 64, 66-67, 70, 72, 75, 78-79; Duncan Rep. Decl. ¶¶ 2, 3, 12, 16, 18 & Att. A ¶¶ 21, 24, 28, 31 (PSC's November 3, 1999, order approving the Amended Performance Assurance Plan)

AT&T claims that Bell Atlantic's discussion of the PSC's November 3, 1999, order approving the Amended Performance Assurance Plan is new evidence or argument. But the November 3 Order is plainly not "new evidence": it is a matter of public record of which this Commission may properly take official notice. Nor is Bell Atlantic's discussion of the Order "new argument": Bell Atlantic pointed to the Order merely as confirming arguments already made in the Application. See Application at 68-71.

- Dowell/Canny Rep. Decl. ¶¶ 7, 12, 13, 18, 19, 47; Miller/Jordan/Zanfini Rep. Decl. ¶ 21 (PSC's November 5, 1999, order amending carrier-to-carrier measures)

AT&T claims that Bell Atlantic's discussion of the PSC's November 5, 1999, order amending the carrier-to-carrier measures is new evidence or argument. But the November 5 Order is plainly not "new evidence": it is a matter of public record of which this Commission may properly take official notice. Nor is Bell Atlantic's discussion of the Order "new argument": Bell Atlantic's reply submissions pointed to the Order merely as confirming arguments already made in the Application. See Application at 67-68; Dowell/Canny Decl. ¶¶ 122-152 & Att. C.

- Dowell/Canny Rep. Decl. ¶ 10 (reporting of Change Control measurements)

AT&T claims that, in responding to MCI WorldCom's claims (Kinard Decl. ¶ 20), Bell Atlantic improperly relies on a new commitment to report, beginning in November 1999, two Change Control measurements, and to provide data for these measurements for August, September, and October. This is not a new commitment, but merely reiterates an earlier commitment that Bell Atlantic made in the Carrier-to-Carrier proceedings. See Case 97-C-0139, PSC, Order Establishing Permanent Rule, June 30, 1999 (App. E, Tab 83); Bell Atlantic July 12, 1999 Compliance Filing at 13-14, Case 97-C-0139 (PSC filed July 12, 1999) (App. E, Tab 85).

- Dowell/Canny Rep. Decl. ¶ 12 (modification of EnView guidelines)

AT&T claims that Bell Atlantic improperly relies on a new commitment to modify its Carrier Guidelines concerning EnView. This is not a new commitment. Bell Atlantic is merely stating that it will comply with the PSC's November 5 Order, which Bell Atlantic is already obligated to do under state law.

- Dowell/Canny Rep. Decl. ¶ 42 (reporting of service order accuracy on a disaggregated basis)

AT&T claims that Bell Atlantic improperly relies on a new commitment to report service order accuracy for UNEs on a disaggregated basis. In fact, Bell Atlantic in the challenged paragraph merely reported on its on-going participation in a PSC collaborative. See Dowell/Canny Rep. Decl. ¶ 42 ("This issue is on the agenda for the November 9, 1999 C2C collaborative meeting so that the subgroup can determine a more appropriate methodology for service order accuracy. As with LSRC Accuracy, these data will be reported on a disaggregated basis for UNE-L and UNE-P."). This statement is not a new commitment, but merely reiterates Bell Atlantic's existing commitment to comply with future requirements that are developed in the on-going Carrier-to-Carrier proceedings.

- Dowell/Canny Rep. Decl. ¶ 46 (future flow-through capabilities)

AT&T complains of a sentence that states: "the October 8 Joint BA-NY Affidavit . . . shows only that BA-NY takes seriously its commitment to continue to increase flow through over time, and it shows that BA-NY's future performance will more than meet the requirements of the Act at future volumes." Bell Atlantic is plainly entitled to point to this affidavit (which was addressed in AT&T's opening comments at 18): it is directly responsive to arguments by AT&T and others (to the effect that Bell Atlantic will be unable to flow through future order volumes), and the affidavit pre-dates October 19.

- Dowell/Canny Rep. Decl. ¶ 47; see also Miller/Jordan/Zanfini Rep. Decl. ¶ 42; Reply Comments at 17 (future flow-through capabilities)

AT&T again complains of Bell Atlantic's reliance on the October 8 PSC affidavit. Again, Bell Atlantic is plainly entitled to point to this affidavit (which was addressed in AT&T's opening comments at 18): it is directly responsive to arguments by AT&T and others (to the effect that Bell Atlantic will be unable to flow through future order volumes), and the affidavit pre-dates October 19.

- Dowell/Canny Rep. Decl. ¶ 57 (new DSL procedures)

AT&T complains of a sentence that states: "Indeed, the NY PSC found that the improved DSL procedures that are being developed in the ongoing xDSL collaborative will 'ameliorate repair problems.' (PSC at 98 n.4.)." AT&T's complaint is puzzling. It is entirely unclear why Bell Atlantic should not be allowed to point to comment favoring its Application, nor why Bell Atlantic should not be allowed to discuss likely future consequences of pre-Application events. This is also not new argument: Bell Atlantic addressed the DSL collaborative in its Application (at 21).

OSS

- Reply Comments at 18 n.20; Miller/Jordan/Zanfini Rep. Decl. ¶¶ 37-39 & Att. E (retail orders entered through DOE)

AT&T claims that Bell Atlantic improperly introduces new evidence regarding the percentage of October retail orders that were processed using Bell Atlantic's DOE system. But the targeted items respond directly to AT&T's erroneous claim that Bell Atlantic must provide the numbers of actual orders (rather than order kinds) that flow through in Bell Atlantic's own retail operations. See AT&T Comments at 16; see also DoJ Eval. at 17, 31. In response to these comments, Bell Atlantic's reply submissions included data concerning the closest retail analog to flow through, which showed that CLECs are being treated at least as well as Bell Atlantic's own retail operations. See Bell Atlantic Rep. Cmts. at 18 n.20. The targeted items also respond to DoJ's concerns regarding Bell Atlantic's manual processing of recent UNE platform orders. See, e.g., DoJ Eval. at 17, 31. Insofar as these data post-date October 19 at all, they do not post-date either the DoJ's November 1, 1999, Evaluation or the period the DoJ placed in dispute.

- Miller/Jordan/Zanfini Rep. Decl. ¶ 5 (October data on pre-ordering, ordering, and provisioning)

AT&T apparently claims that Bell Atlantic improperly introduces new evidence concerning the number of pre-ordering, ordering, and provisioning transactions that Bell Atlantic processed in October. But the data respond directly to the DoJ's concerns about the ability of Bell Atlantic's systems to handle future volumes. See, e.g., DoJ Eval. at 12-13, 32-33. Bell Atlantic's data demonstrate that, even though order volumes increased significantly in September and October, Bell Atlantic's pre-ordering and ordering systems were readily able to accommodate the increased demand. These data do not post-date either the DoJ's November 1, 1999, Evaluation or the period the DoJ placed in dispute.

- Miller/Jordan/Zanfini Rep. Decl. ¶ 19 (software bug in SSL3 code)

AT&T challenges a sentence in the Miller/Jordan/Zanfini Reply Declaration that reads as follows: "BA-NY discovered a latent bug in the SSL3 code, which was corrected on November 5." But this is not new evidence. MCI WorldCom's comments (at 28-29) characterized Bell Atlantic's EDI interface for pre-ordering as "unstable," but at the same time noted that "MCI WorldCom and BA-NY have not determined the causes for many of the outages, but they continue to work to stabilize the interface." As it turned out, a latent software bug in Bell Atlantic's systems was in part responsible for the outages of which MCI WorldCom complained. (There were also other causes that were attributable to another CLEC.) The purpose of the quoted sentence is simply to explain one of the causes of the instability in the time frame put in issue by MCI WorldCom. The precise date on which the bug was fixed is immaterial.

- Miller/Jordan/Zanfini Rep. Decl. ¶ 25 (daily order transactions)

AT&T apparently complains of a partial sentence that reads as follows: "BA-NY is now processing 8,000 order transactions per business day." This sentence refers to an average number for October. See Miller/Jordan/Zanfini Rep. Decl. ¶ 5 (177,000 ordering transactions in October divided by 22 business days equals about 8,000 transactions per business day). The data responds directly to the DoJ's concern about the ability of Bell Atlantic's pre-ordering systems to handle future volumes. See DoJ Eval. at 32-33. Bell Atlantic's data demonstrate that, even though order volumes increased significantly in September and October, Bell Atlantic's ordering systems were able to handle this increase. These data do not post-date either the DoJ's November 1, 1999, Evaluation or the period the DoJ placed in dispute.

- Miller/Jordan/Zanfini Rep. Decl. ¶ 40 (level 4 platform orders manually processed)

AT&T apparently complains of a sentence that reads as follows: "Of UNE platform orders which were passed to the TISOC for processing between October 12 and October 27, 14% involved only the minimal manual work required for Level 4 orders." The targeted sentence responds directly to the DoJ's concerns regarding Bell Atlantic's manual processing of UNE platform orders. See DoJ Eval. at 17, 31. In response to these concerns, Bell Atlantic presented data showing that a portion of UNE platform orders requiring manual processing were so-called Level 4 orders, which require only minimal processing. These data do not post-date either the DoJ's November 1, 1999, Evaluation or the period the DoJ placed in dispute.

- Reply Comments at 17; Miller/Jordan/Zanfini Rep. Decl. ¶ 42 (future flow-through capabilities)

AT&T apparently complains of language stating that Bell Atlantic has already implemented some of the flow-through enhancements to which Bell Atlantic committed in the October 8 PSC affidavit. The October 8 affidavit itself is addressed above. See supra. The implementing steps to which Bell Atlantic's reply submissions referred occurred before November 1. See Miller/Jordan/Zanfini Rep. Decl. ¶ 42 ("The first phase of this commitment was implemented on October 31."). The targeted items respond directly to the DoJ's concerns regarding Bell Atlantic's future flow-through capabilities. See, e.g., DoJ Eval. at 32. The evidence does not post-date either the DoJ's November 1, 1999, Evaluation or the period the DoJ placed in dispute.

- Miller/Jordan/Zanfini Rep. Decl. ¶ 46 (LSRC accuracy)

AT&T complains of a sentence stating that, with respect to order confirmations, "BA-NY made further system corrections in September and October." This sentence responds directly to the DoJ's claim that, "when Bell Atlantic does return order confirmations, a substantial portion of those confirmations are inaccurate." DoJ Eval. at 15-16. Although the DoJ implied that this was so as of the date in which it filed its Evaluation, its claim was in fact based on old evidence -- in particular, a Bell Atlantic statement made before numerous fixes were implemented in Bell

Atlantic's systems. See Bell Atlantic Rep. Cmts. at 8. The evidence does not post-date either the DoJ's November 1, 1999, Evaluation or the period the DoJ placed in dispute.

- Miller/Jordan/Zanfini Rep. Decl. ¶ 70 & Att. I (Type 1 notifications)

AT&T apparently complains of language in which Bell Atlantic shows that "[t]he new process for Type 1 notifications was discussed at a meeting on October 15, 1999, as well as at the September and October monthly Change Management meetings," that it proposed modifications in a document "that was distributed to CLECs on October 25, 1999," and that this document "will be discussed at the November 9, 1999 Change Management meeting." These statements respond to claims by DoJ (at 34-35), AT&T (at 28), and Sprint (at 20) regarding the Change Management process, particularly claims that Bell Atlantic uses Flash Announcements to disseminate information that should be distributed in some other way. This evidence does not post-date either the DoJ's November 1, 1999, Evaluation or the period the DoJ placed in dispute.

- Miller/Jordan/Zanfini Rep. Decl. ¶ 88 (LSOG-4 documentation)

AT&T complains of two sentences concerning a collaborative to explore whether Bell Atlantic can increase the uniformity of its business rules across its region: "That effort produced agreement on a number of changes to add to the LSOG 4 February release. These changes have been updated in the documentation and were sent to the CLECs for review on October 25, 1999." These sentences directly respond to arguments by AT&T's affiants (Crafton/Connolly Aff. ¶ 209) regarding the opportunity for CLECs to review the LSOG-4 documentation. The purpose of these sentences is to explain that the collaborative is on-going. The fact that documentation changes were distributed for review "on October 25, 1999" (the words that caused these sentences to be caught in AT&T's global word-search net) is immaterial.

- Miller/Jordan/Zanfini Rep. Decl. ¶ 22 (parsed CSR functionality)

AT&T complains of a sentence relating to parsed CSR functionality: "After discussions with MCI WorldCom and the New York PSC, BA-NY has agreed to document expressly any exclusions from the parsed CSR functionality." This is now a non-issue: MCI recently filed an Ex Parte letter stating that "MCI WorldCom has resolved" its problems relating to parsed CSR functionality. See Ex Parte Letter from Lori Wright, Senior Manger, Regulatory Affairs, MCI WorldCom, to Magalie Salas, Secretary, FCC, CC Docket No. 99-295 (FCC Nov. 24, 1999). (If its extreme position in this proceeding is any guide, AT&T's reply may claim that the fact that this is now a non-issue is itself prohibited new evidence. Any such claim would be so meritless as to require no response.)

- Miller/Jordan/Zanfini Rep. Decl. ¶ 41 (additional TISOC employees)

AT&T apparently complains of portions of sentences stating that "an existing retail center in Boston with 120 trained representatives will become part of the TISOC and will handle CLEC orders in the first quarter of 2000," that "[e]ighteen of the representatives will join the TISOC next week," and that "[t]he assimilation of the Boston center will double BA-NY's

capacity for manual processing." These sentences respond directly to AT&T's claim that Bell Atlantic will be unable in the future to staff its TISOCs to handle orders that require manual processing, as well as to the DoJ's concern about the ability of Bell Atlantic's pre-ordering systems to handle future volumes. The targeted sentences do not contain new evidence; they merely illustrate Bell Atlantic's pre-existing ability and commitment to staff its TISOCs to keep pace with increasing demand. See, e.g., Miller/Jordan Decl. ¶ 43.

- Miller/Jordan/Zanfini Rep. Decl. ¶ 46 (automated return of cable and pair information on order confirmations).

AT&T complains of a sentence in the discussion of order confirmations and error notices that states: "In December, BA-NY will implement the automated return of cable and pair information." This sentence does not constitute a new commitment; rather, it merely reiterates a pre-existing commitment (made in an October 12 Change Management meeting) to improve the accuracy of its order confirmations even further.

- Miller/Jordan/Zanfini Rep. Decl. ¶ 52 (completion notices)

AT&T complains of two sentences in the discussion of completion notices that state that, "because AT&T and several other CLECs have asked that BA-NY include feature detail on the completion notice, BA-NY is prepared to implement this functionality in April (with shortened documentation notification timelines)," and that "BA-NY will discuss the implementation with CLECs at the next regularly scheduled Change Management meeting." These sentences do not constitute a new commitment, but rather are a description of Bell Atlantic's efforts to comply with requirements in the on-going Change Management process. They describe a pre-existing commitment made in these proceedings to provide additional feature detail on completion notices.

- Miller/Jordan/Zanfini Rep. Decl. ¶ 65 (usage data)

AT&T complains of a sentence in the discussion of billing that states: "Nevertheless, after November 20, 1999, BA-NY will also be able to provide [billing data on] conversation time." This sentence does not constitute a new commitment, but rather illustrates Bell Atlantic's compliance with its pre-existing commitment to provide call duration information as part of usage data.

- Miller/Jordan/Zanfini Rep. Decl. ¶ 65 (jurisdictional indicators)

AT&T complains of a sentence in the same discussion of billing that states: "Nevertheless, BA-NY has agreed to provide AT&T and the other CLECs with jurisdictional indicators and anticipates being able to do so in February 2000." This sentence does not constitute a new commitment, but rather illustrates Bell Atlantic's compliance with its pre-existing commitment to provide jurisdictional indicators as part of usage data.

- Miller/Jordan/Zanfini Rep. Decl. ¶ 70 (Flash Announcements)

AT&T complains of a sentence in the discussion of the Change Management process that states: "BA-NY has also agreed to hold an additional workshop to refine the definitions for type of severity for software defects [in connection with Flash Announcements]." This sentence does not constitute a new commitment, but merely illustrates Bell Atlantic's compliance with its pre-existing commitment to co-operate in the on-going monthly Change Management meetings.

- Miller/Jordan/Zanfini Rep. Decl. ¶ 81 (Change Management for billing)

AT&T claims that Bell Atlantic improperly relies on new commitments to follow the Change Management process for future billing changes. The targeted item does not contain a new commitment, but rather a clarification regarding the Change Management process, which has always included billing issues. See Miller/Jordan Decl. Att. G at 3. A few CLECs expressed confusion in their comments about whether Bell Atlantic would subject Maintenance and Repair and billing to the Change Management process. Bell Atlantic here merely clarifies that such billing is subject to the Change Management process.

- Miller/Jordan/Zanfini Rep. Decl. ¶ 98 (trouble reporting system)

AT&T complains of two sentences in the discussion of Bell Atlantic's help desk stating that "BA-NY plans to implement a new trouble reporting system this year" and that "staff will be added as needed." These items do not constitute a new commitment, but merely illustrate Bell Atlantic's compliance with its pre-existing commitment to improve the support Bell Atlantic provides to CLECs.

Section 272

- Browning Rep. Decl. ¶ 4 & Att. A (FCC forbearance petition regarding National Directory Assistance service)

AT&T complains of Bell Atlantic's Petition for Forbearance filed with the FCC on October 22, 1999, concerning the application of Section 272 to Bell Atlantic's National Directory Assistance service. As described in Bell Atlantic's Reply Comments, only two days before Bell Atlantic filed its Application, this Commission issued an order that classified national directory assistance as an incidental interLATA service subject to Section 272. In the same order, the Commission granted U S West forbearance from Section 272's requirements. Shortly after filing its Application, Bell Atlantic filed a petition asking for similar treatment. Bell Atlantic's petition is a matter of public record of which the Commission may take official notice. It is attached simply for the Commission's convenience.

- Browning Rep. Decl. ¶ 13 (on-line postings)

AT&T claims that Bell Atlantic improperly introduces new evidence regarding posting updates made after October 19, 1999. This is not new evidence, but merely describes small

modifications to Bell Atlantic's on-line transaction posting. In particular, Bell Atlantic has updated certain transactions that initially were posted with estimated fees (a perfectly acceptable practice) with actual fees. Bell Atlantic's statement does not relate to a change in process or procedure, but merely confirms that Bell Atlantic is continually updating its postings, which is an on-going process.

- Browning Rep. Decl. ¶ 18, sentences number 5-7 & Att. D (officer certifications)

AT&T claims that Bell Atlantic improperly introduces new evidence regarding its procedures to ensure that office certifications are available for public inspection. This is not new evidence, but merely describes the efforts Bell Atlantic has taken to comply with its obligations to keep current officer certifications of each posted transaction available at each public inspection site. As Bell Atlantic explained in its Reply Comments, on one occasion it inadvertently failed to make available for public inspection a small number of documents. To prevent this from happening again, Bell Atlantic has begun conducting regular checks of inspection sites to ensure that there is a certification page available for each posted contract. Because the certification process is on-going, the Browning Reply Declaration attaches a complete set of the officer certifications, including several new certifications that were recently executed.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Application by New York Telephone	)	
Company (d/b/a Bell Atlantic - New York),	)	
Bell Atlantic Communications, Inc.,	)	CC Docket No. 99-295
NYNEX Long Distance Company, and	)	
Bell Atlantic Global Networks, Inc., for	)	
Authorization To Provide In-Region,	)	
InterLATA Services in New York	)	

JOINT SUPPLEMENTAL DECLARATION OF PAUL A. LACOUTURE AND ARTHUR J. TROY

1. My name is Paul A. Lacouture. I submitted a Joint Declaration and a Joint Reply Declaration with Arthur J. Troy in this proceeding on September 29, 1999, and November 8, 1999, respectively. My qualifications are set forth in the Joint Declaration.

2. My name is Arthur J. Troy. I submitted a Joint Declaration and a Joint Reply Declaration with Paul A. Lacouture in this proceeding on September 29, 1999, and November 8, 1999, respectively. My qualifications are set forth in the Joint Declaration.

I. Purpose of Reply Declaration

3. The purpose of our Joint Supplemental Declaration is to address the checklist issues raised by AT&T in its motion to strike portions of Bell Atlantic - New York's ("BA-NY") reply submissions and the accompanying supplemental affidavit of Jack Meek. In particular, we show that BA-NY's Section 271 Application did address the checklist issues that AT&T claims were not addressed until commenters raised them

in their comments. We also respond to the new arguments raised by AT&T in its latest filing.

II. On-Time Hot Cut Performance

4. In its motion to strike, AT&T claims that BA-NY should have addressed the issue of on-time hot cut performance, but failed to do so. AT&T Motion at 4-5. We fully addressed this issue in our Joint Declaration filed as part of BA-NY's Section 271 Application.

5. We explained that "BA-NY worked cooperatively with the New York Public Service Commission and CLECs to address concerns about the hot cut process" and that, "[b]etween June 21, 1999, when BA-NY began using the New York Public Service Commission's tracking checklist, and September 17, 1999, BA-NY completed over 94 percent of its 4,497 hot cut orders on time." Lacouture/Troy Decl. ¶¶ 69-70, 72-73. We also addressed the so-called evidence that AT&T submitted to the New York Public Service Commission (and resubmitted to the Federal Communications Commission) regarding its hot cuts and noted that "[t]he Staff of the New York Public Service Commission undertook a data reconciliation under the aegis of the Administrative Law Judge." Id. ¶ 75. As a result of that reconciliation, "[t]he Staff identified only 8 missed hot cuts that BA-NY should have captured in its metrics – an error rate of about only 1.5 percent which is reflected in the 94 percent performance BA-NY now reports." Id.

6. AT&T was simply wrong in its claim that BA-NY's on-time hot cut performance was only around 70 percent. The New York Public Service Commission's

review of AT&T's so-called evidence "determined Bell Atlantic-NY's on-time performance for July 1999 to be 90.79%." NYPSC Comments at 87.

7. Mr. Meek now criticizes the New York Public Service Commission's reconciliation of AT&T's hot cut orders as using "soft scoring." For example, Mr. Meek argues that the New York Public Service Commission "failed to include I Codes in its reported on-time measure." Meek Supp. Aff. ¶ 13. But Mr. Meek is attempting to mix apples and oranges. The fact is that the on-time performance and I-Code metrics developed in the New York Public Service Commission's Carrier-to-Carrier proceeding measure two very different aspects of BA-NY's performance. I-Codes are trouble reports submitted by a competing carrier within seven days **after** a hot cut is completed. They do not indicate whether a hot cut was completed on time.

8. Mr. Meek also states that, "whenever a hot cut problem occurs but is not discovered and reported by the CLEC within one hour of BA-NY's hot cut completion call, it is scored not as an on-time provisioning failure, but as a hot cut loop trouble reported within 7 days under carrier to carrier metric PR-6-02 (the so called 'I-Code')." Id. ¶ 10. Mr. Meek is implying that, for every trouble reported on a hot cut loop within seven days, the hot cut created a service outage. That is simply not true. Troubles can develop on a loop after it is successfully hot cut. For example, a successfully hot cut loop could stop working within a few days if the loop facilities serving that customer were damaged in a storm or accidentally severed by a contractor. Such troubles would be counted as "I-Codes" in Carrier-to-Carrier metric PR-6-02.

9. Moreover, BA-NY's I-Code rate has been excellent. For the months of July, August, and September 1999, BA-NY has received trouble reports on far fewer than

one percent of its hot cut loops within seven days of the hot cut. See Carrier-to-Carrier Reports (Dowell/Canny Decl. Att. D; Dowell/Canny Rep. Decl. Att. C; Ex Parte Letter from D. May, Director, Federal Regulatory Affairs, Bell Atlantic, to M. Salas, Secretary, FCC, CC Docket No. 99-295 (Nov. 24, 1999)). For the month of October, BA-NY received I-Code trouble reports on fewer than one-half of one percent of its hot cut loops. In each month, the I-Code rate for hot cut loops was significantly better than the two-percent standard established by the New York Public Service Commission.

10. Second, Mr. Meek claims that the New York Public Service Commission Staff failed to include "inaccurate or incomplete LSRC [order confirmation] information provided by BA-NY" in its scoring of on-time performance. Meek Supp. Aff. ¶ 13. Once again, Mr. Meek is mixing apples and oranges. A separate metric was developed in the Carrier-to-Carrier proceeding to measure the accuracy and completeness of LSRCs (OR-6-03). For the months of July, August, and September 1999, BA-NY's LSRC accuracy has exceeded the New York Public Service Commission's benchmark of 95 percent. See Carrier-to-Carrier Reports (Dowell/Canny Decl. Att. D; Dowell/Canny Rep. Decl. Att. C).

11. Third, Mr. Meek states that the New York Public Service Commission failed to score "misses" where BA-NY did not follow hot cut process steps, such as the due date minus two ("DD-2") dial tone check. Meek Supp. Aff. ¶ 13. But as we explained in our Joint Reply Declaration, "the New York Public Service Commission Staff checked whether BA-NY completed the DD-2 check and provided ample time for AT&T to address any dial tone problems. If the check was not completed and BA-NY

did not provide ample time to correct a dial tone problem, the order was scored as a miss." Lacouture/Troy Rep. Decl. ¶ 62.

12. Fourth, Mr. Meek states that the New York Public Service Commission Staff scored missed orders as "on time" when the Staff determined that the hot cut was completed "close enough" to the scheduled time. Meek Supp. Aff. ¶ 13. In fact, for several orders, BA-NY's logs showed that the hot cut was completed on time, while AT&T's logs listed a completion time several minutes later. The Staff concluded that this slight difference in clock synchronization was not an indication that the hot cut was late. Moreover, attempting to determine the hot cut completion time from AT&T's logs was often difficult because AT&T frequently mixed Eastern and Mountain times.

13. Finally, Mr. Meek cites a hot cut order that the New York Public Service Commission scored as "on time" because AT&T had itself scored that hot cut as "on time." Apparently, Mr. Meek thinks the New York Public Service Commission should score AT&T's hot cuts as "misses" even when AT&T claims those hot cuts were "on time." If AT&T thought the hot cut was missed, it should have scored it as such. The New York Public Service Commission can hardly be accused of "soft scoring" when it gives a hot cut the same score as AT&T.

III. Hot Cut Service Outages

14. In its motion to strike, AT&T also claims that BA-NY should have addressed the issue of hot cut service outages, but failed to do so. AT&T Motion at 4-5. Once again, we fully addressed this issue in our Joint Declaration filed as part of BA-NY's Section 271 Application.

15. We explained that "[t]he hot cut process is designed to move a loop that is in service from BA-NY's switch to the CLEC's switch. . . . with the objective being that the customer will be out of service for no more than 5 minutes." Lacouture/Troy Decl. ¶ 69. We also explained that "KPMG found that BA-NY's central office technicians followed the required hot cut procedures 97 percent of the time." Id. ¶ 73.

16. If BA-NY did put a customer out of service during a hot cut, the competing carrier would have to notify BA-NY of the problem. Once the hot cut is complete, BA-NY cannot use its mechanized loop testing equipment because the loop is no longer connected to BA-NY's switch. If the problem were attributable to BA-NY, it would be counted as an I-Code trouble report for that line. An I-Code trouble report, however, may not be related to the hot cut itself. Rather, it may simply reflect a problem with the loop facilities that developed after the hot cut.

17. Notwithstanding the fact that I-Codes include both hot cut and non-hot cut related trouble reports, BA-NY's I-Code trouble report rate has been excellent. For the months of July through September 1999, BA-NY has received trouble reports on fewer than one percent of its hot cut loops within seven days of the hot cut. See Carrier-to-Carrier Reports (Dowell/Canny Decl. Att. D; Dowell/Canny Rep. Decl. Att. C; Ex Parte Letter from D. May, Director, Federal Regulatory Affairs, Bell Atlantic, to M. Salas, Secretary, FCC, CC Docket No. 99-295 (Nov. 24, 1999)). For the month of October 1999, BA-NY has received trouble reports on fewer than one-half of one percent of its hot cut loops within seven days of the hot cut.

18. In its comments, AT&T submitted so-called "evidence" of AT&T customers that had been put out of service for extended periods by BA-NY's hot cut

procedures. In our Joint Reply Declaration, we analyzed AT&T's submission and pointed out that many of the orders "have an AT&T Hot Cut Acceptance Index Number indicating that AT&T verified that their customer's service was working properly upon completion of the hot cut." Lacouture/Troy Rep. Decl. ¶ 55.

19. Mr. Meek now claims that BA-NY should be charged with a hot cut service outage even when AT&T certifies that the hot cut is working. According to Mr. Meek, AT&T doesn't really know whether a hot cut line is working properly because AT&T merely "calls its customer to confirm the existence and quality of the service." Meek Supp. Aff. ¶ 10. AT&T then relies on its customer to check all of the hot cut lines. This is more of a problem with AT&T's process for checking its customers' lines, than an issue with BA-NY's hot cut performance.

20. Mr. Meek is wrong to suggest that it can certify that a hot cut is working and later repudiate that certification. If carriers could change their mind about their hot cut certifications, it would make the entire certification process pointless. BA-NY relies on a CLEC's acceptance or rejection of a hot cut because, as explained above, BA-NY cannot check the line after the hot cut is complete.

21. Moreover, this problem is unique to AT&T. Other competing carriers use the capability of their switches to perform a mechanized loop test for each line on a hot cut order. AT&T does not perform such mechanized tests on all of its hot cut lines, even though it could do so. AT&T also does not complete a test call to each line involved in its customers' hot cuts, even though it could do so. Instead, AT&T relies on its own customers to check their own lines, even though AT&T admits that its customers are either "too busy or are unaware of all the lines being cut over." Id. ¶ 10.

22. In our analysis of AT&T's submission on hot cut service outages, we also pointed out that, "where the hot cut did interrupt the customer's service, AT&T was itself responsible for much of the delay in restoring the customer's service . . . . On average, it took AT&T more than 56 hours to report the problem with the hot cut to BA-NY." Lacouture/Troy Rep. Decl. ¶ 56.

23. Mr. Meek now argues that AT&T is not really responsible for all of the 56-hour delay because part of that delay was the time it took AT&T's customer to notify AT&T of the outage. But it was AT&T that counted this time against BA-NY in its measure of the length of service outage following hot cuts. Plainly, BA-NY is not responsible for the time it takes AT&T's customers to report a service problem to AT&T. Moreover, there likely would not be a 56-hour delay if AT&T used mechanized loop testing to verify that each line is working immediately after the hot cut, as many other competing carriers do.

24. In any event, as stated earlier, BA-NY receives very few trouble reports on hot cut loops within seven days of the hot cut.

Declaration

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

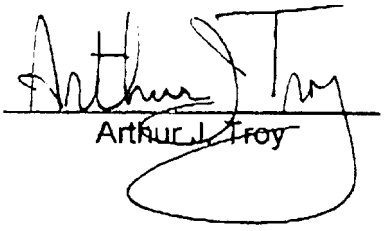
Executed on December __, 1999

Paul A. Lacouture

Declaration

I declare under penalty of perjury under the laws of the United States America that the foregoing is true and correct to the best of my knowledge and belief.

Executed on December 1, 1999



Arthur J. Troy